



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: J.D. Bertolini Industries, Ltd.
File: B-231598
Date: September 14, 1988

DIGEST

Bid that acknowledges an amendment to a solicitation, but contains the original bidding schedule which was modified by this amendment to increase the quantity of a line item, is nonresponsive where the bid offers a unit and total price for the original lesser quantity but fails to include a price for the increased quantity since the bid does not represent a clear commitment to furnish the increased quantity at a specified price.

DECISION

J.D. Bertolini Industries, Ltd. protests the proposed award of a contract to Shoals American Industries, Inc., under invitation for bids (IFB) No. N62578-87-B-7046, issued by the Naval Construction Battalion Center, Davisville, Rhode Island, for shipping and storage containers. The protester challenges the contracting officer's finding that Shoals' apparent low bid was responsive.

We sustain the protest.

The IFB was issued on December 2, 1987, and stated that one award was contemplated. The IFB included a bid schedule which required insertion of a unit and total price for specified types of containers. The IFB was amended five times prior to bid opening. The protest concerns amendment No. 3, which increased the required quantity of contract line item number (CLIN) 3 from 314 to 335 containers. The amendment also provided a replacement bidding schedule sheet, reflecting the increased quantity required under CLIN 3.

Nineteen bids were received at bid opening on March 18. Shoals is the apparent low bidder at an adjusted bid price of \$8,962,871.91. Bertolini is next low with a bid price of \$9,443,486.

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Shoals acknowledged all five amendments. However, Shoals submitted its bid on the original bidding schedule which contained unit and total prices for the original quantity in the unamended IFB. After bid opening, Shoals informed the contracting officer by letter that it had not received the new bidding schedule with its copy of amendment No. 3, but that it had acknowledged and subscribed to the amendment increasing the requirement to 335 units.^{1/} In that letter, Shoals indicated that the unit price of \$3,214.17 for CLIN 3 contained in its original bidding schedule was intended as the unit price for the total quantity of CLIN 3 required by the amended solicitation. Shoals did not explain its intent in submitting a total CLIN 3 price at the original lesser quantity.

The contracting officer found Shoals' bid responsive based upon Shoals' acknowledgment of the amendments. The Navy did not believe that the omission of a price for the CLIN 3 added quantity in Shoals' bid justified its rejection. The Navy concluded that since Shoals acknowledged amendment No. 3, it was bound to perform in accordance with the increased quantity terms of the solicitation. The Navy found that Shoals' failure to include a price for the increased quantity was a minor informality that should be waived since Shoals' bid could easily be adjusted by multiplying its stated CLIN 3 unit price of \$3,214.17 by the 21 additional units required by amendment No. 3. The contracting officer then adjusted upward Shoals' bid price \$67,497.57 based on the unit price in the original schedule. This protest followed. Award has been withheld pending our decision.

Bertolini protests that Shoals' bid submitted on the original bid schedule is nonresponsive because the bid only obligates Shoals to furnish the original quantity of CLIN 3 containers. We agree.

To be responsive, a bid must reflect an unequivocal offer to provide the exact item or service called for in the IFB so that acceptance of the bid will bind the contractor to perform in accordance with the IFB's material terms and conditions. The mere acknowledgment of an amendment

^{1/} Shoals alleges that it also contacted the contracting officer by telephone prior to bid opening concerning its failure to receive a new bidding schedule. However, Shoals' bid offers a unit and total price for only 314 CLIN 3 containers and does not indicate on its face the unit or total price it offers for the additional required quantity.

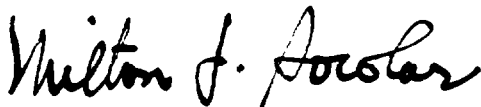
increasing the quantity of an item in a bid schedule is not sufficient to constitute a bid for the additional quantity. See Larry's Inc., B-230822, June 22, 1988, 88-1 CPD ¶ 599. Contrary to the Navy's position, where the bid does not include a price for the increased quantity of an item added by an amendment, doubt exists not only as to the intended price for it but also as to whether the bidder in fact has offered, in the bid as submitted, to obligate itself to provide the increased quantity. See Main Electric Ltd., B-224026, Nov. 3, 1986, 86-2 CPD ¶ 511.

When a bidder does not bid on the precise quantity, measurement or volume called for in the IFB, the bid must be rejected as nonresponsive unless the intended price for the proper quantity, measurement or volume can be determined from the face of the bid. See Artisan Builders, 65 Comp. Gen. 240 (1986), 86-1 CPD ¶ 85. Shoals submitted a bid for only 314 of the required 335 containers which renders it nonresponsive. It is not possible to determine from the face of the bid whether Shoals has in fact offered the additional 21 containers, and if so, its price for the added quantity cannot be determined with certainty. To the extent Shoals now contends that it offers its stated unit price as its unit price for the additional quantity, a nonresponsive bid cannot be made responsive by explanations after bid opening. See BKS Construction Co., 66 Comp. Gen. 492 (1987), 87-1 CPD ¶ 558. Allowing Shoals to explain its bid after bid opening would, in effect, give Shoals the advantage of electing to accept or reject the contract by choosing whether to make the bid responsive. Moreover, to hold otherwise here would give the bidder an option after all the bids have been exposed to argue, if the bids were close in price, that the price for the additional quantity has already been included in its bid for that item. On the other hand, if the difference between bid prices was substantial, the bidder could argue that the additional quantities had been omitted and the price should be increased to include that amount. See General Engineering and Machine Works, Inc., B-190379, Jan. 5, 1978, 78-1 CPD ¶ 9. Such a situation obviously would have an adverse impact on the integrity of the bidding process. Id.

The Navy argues that Shoals' bid nevertheless should be accepted based on our decisions that a pricing omission may be waived if the items added by an amendment are divisible from the solicitation's overall requirements, are de minimis as to total cost, and clearly would not affect the competitive standing of bidders. See Leslie & Elliott Co., 64 Comp. Gen. 279 (1985), 85-1 CPD ¶ 212; aff'd, Ryan Electric Co.--Request for Reconsideration, B-218246.2, Apr. 1, 1985, 85-1 CPD ¶ 366. In Leslie & Elliott, the bid omitted a

price for an item added by an amendment to a construction contract. Since that item was found to be divisible from the overall contract requirements, we held that the bid defect could be waived. The defect in Shoals' bid, however, involves a price omission for an additional quantity of an item which is an integral part of the overall contract requirements. Shoals' failure to comply with the solicitation's amended quantity terms represents a material deviation from an essential requirement. Federal Acquisition Regulation § 14.404-2 (FAC 84-5). Consequently, it would be improper to waive Shoals' bidding error. Larry's Inc., B-230822, supra.

We therefore sustain the protest. By separate letter of today, we recommend Shoals' bid be rejected as nonresponsive.

for 
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